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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,209	02/09/2004	Howard M. Marks	110293.2913US2	6748

7590 06/30/2006

PTT LLC (D/B/A HIGH 5 GAMES)  
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NANUET, NY 10954

EXAMINER
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EBRECHT, JOHN

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/773,209	<b>Applicant(s)</b> MARKS ET AL.	
	<b>Examiner</b> John W. Ebrecht	<b>Art Unit</b> 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities: U.S. Patent No. 5,320,356 is referred to interchangeably as Patent 536 and Patent 356.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 2-42 objected to because of the following informalities: the depending claims need to depend upon the preceding claim as the whole, not in part. The claims should begin "The method of claim 1". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 7, 8, 13-16, 31, and 43 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. While it is disclosed in the specification that the cards are dealt to the common area when the dealer shows a nine of any suit, it does not explain why the second card is dealt, or how the two common cards are counted in the final hands.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-14, 16-42, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted Prior Art in view of Sardarian (U.S. Patent No. 5,549,300). In the specification, it is disclosed that a traditional game of twenty-one comprises the steps of placing a wager, in which the minimum and maximum wagers are decided by the gaming establishment, dealing cards to one or more player positions which may be either face up or face down and dealing cards to the dealer position that are generally dealt as one face up and one face down (pg. 3, lines 7-11). Further, it explains the conventional rankings of the cards and the point values that are assigned to each card (pg.3, lines 12-15). The Prior Art discloses (pg. 3, 16-20) that after cards are originally dealt, the player may take additional cards, double the initial wager and take exactly one more card, or double-down, divide a same of same cards into two hands and place another wager, or split, or place a side bet that the dealer has blackjack, called insurance, with or without electing to receive additional cards, or not take any additional cards. The Prior Art further discloses that the dealer receives additional cards following a fixed set of rules (pg. 4, line 4). After all cards have been dealt, the player's cards and the dealer's cards are counted and compared against each

other to determine the winner (pg. 4, lines 8-19). If the player beats the dealer, then the winnings are paid according to a schedule (pg. 4, line 20 - pg. 5, line 2). It is disclosed that winning hands are generally paid at 1:1 odds, based on the closest player to 21 without going over and having a higher point total than the dealer, unless a player receives a "blackjack" in which case the winnings can be paid at either 3:2 or 6:5 odds. Regarding claims 6 and 11, while the limitations as claimed are not specifically disclosed in the Prior Art, it would be obvious to one of ordinary skill in the art to modify the method of dealing the cards in order to modify the level of anticipation and change the odds of the game. Regarding claims such as 7 and 8, "a second common card is dealt" is broad and can read on a player or dealer receiving a second card after the initial card is dealt face-up. A common card can refer to any card commonly found in a deck of cards, which would be any standard card. Regarding claim 26, it would be possible, in a conventional game of twenty-one to wager up to triple the amount previously wagered by electing to receive at least one additional card. This reads on when a player splits a hand twice. Regarding claim 41, the examiner takes Official Notice that in conventional casino twenty-one all players that obtain a higher point total than the dealer are awarded winnings.

In reference to existing patents, the Prior Art describes two modified twenty-one games in which there are common cards. In one game, referred to as patent 356 in the applicant's specification, the players and dealer receive one card face up and a common card is dealt face down to a common card position. In the game of Patent 356, the common card contributes to the count of both the hands of the players and the hand

of the dealer. Patent 675 as described in the specification discloses a modified game of twenty-one but the common card is dealt face up.

None of the admitted Prior Art discloses that player and dealer cards are dealt from different decks. However, in a casino environment, it is common to use multiple decks for a single game. Sardarian teaches the concept of using multiple decks of cards in a game of blackjack similar to that of the applicant. If multiple decks are being used it is possible for the dealer's cards to come from a different deck than the player's cards. In view of Sardarian it would have been obvious to one of ordinary skill in the art at the time of invention to modify the admitted Prior Art with the multiple decks of cards in order to create a larger mix of card from which the players hands are dealt and thereby change the odds of the game.

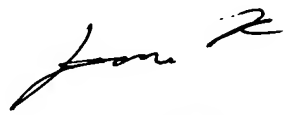
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John W. Ebrecht whose telephone number is (571) 272-8959. The examiner can normally be reached on Monday - Friday 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene L. Kim can be reached on (571) 272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Ebrecht  
Art Unit 3711



EUGENE KIM  
SUPERVISORY PATENT EXAMINER